

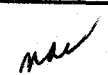
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Arizona Corporation Commission  
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE ARIZONA  
PUBLIC SERVICE COMPANY'S  
REQUEST FOR A VARIANCE OF  
CERTAIN REQUIREMENTS OF A.C.C.  
R14-2-1606

Docket No. E-01345A-01-0822  
REQUEST FOR PROCEDURAL  
CONFERENCE

Before the Commission takes any further action concerning the Request of Arizona Public Service Company for a Partial Variance to A.A.C. R14-2-1606(B) and for Approval of a Purchase Power Agreement (hereinafter the "Variance Request"), Intervenor, Arizona Competitive Power Alliance<sup>1</sup> (the "Alliance"), respectfully requests that the Hearing Division schedule a Procedural Conference to address, with input from all parties, the scope of the issues to be considered in this docket, the nature and timing of the proceedings necessitated by the Variance Request and APS' continued compliance with A.A.C. R14-2-1601 *et seq.* (the "Electric Rules) and prior Commission orders, including the decision approving the APS Settlement Agreement, during the period that this matter is being resolved. Holding such a conference at this time will promote the orderly consideration of APS' request and aid the Commission in ensuring that all parties are afforded due process. *See, e.g.*, Reply of APS to Response of Commission Staff ("APS Reply") at 1, 11; Staff's Response at 8.

<sup>1</sup> Arizona Competitive Power Alliance is a coalition in support of competition and includes Allegheny Energy Supply, Caithness Energy L.L.C., Calpine, Duke Energy North America, LLC, Gila Partners, Mirant Americas, Inc., Panda Energy International, Inc./Teco Power Services Corporation, PG&E National Energy Group, PPL Montana, LLC, Reliant Energy, Semptra Energy Resources and Southwestern Power Group II, LLC.

1     **I. The Need for a Procedural Conference is Paramount.**

2             APS would have the Commission believe that it seeks nothing more than a temporary and  
3     inconsequential adjustment to the structure of electric competition in Arizona. *See, e.g.*, APS  
4     Reply at 2 (APS seeks “only a variance to one subsection of one” of the 17 Electric Rules). This  
5     is akin to claiming that removal of a heart, simply one, relatively-small organ, will have little  
6     impact on the whole body. The Variance Request threatens the very viability of electric  
7     competition in Arizona by seeking to remove its heart—the requirement that 100% of generation  
8     for standard offer customers be obtained from the competitive market. APS’ effort to minimize  
9     the impact of the relief it seeks must be rejected.

10            In fact, the Alliance questions whether the relief APS seeks is the proper subject of a  
11     variance pursuant to A.A.C. R14-2-1614(C). If granted, the Variance Request would alter the  
12     nature of competition for the largest electric consumer base in Arizona. The Alliance believes  
13     such relief is not only inconsistent with the Electric Rules, it is also a violation of the APS  
14     Settlement Agreement and the Commission decision approving that agreement.<sup>2</sup> Accordingly,  
15     one topic to consider at the Procedural Conference is how the Commission should determine the  
16     validity of the Variance Request as a matter of law.

17            Additionally, and in stark contrast to APS, which seeks to narrow the scope of the  
18     Commission’s adjudication in this docket, Staff appears to seek to utilize APS’ filing as a vehicle  
19     to revisit the Electric Rules as well as apparently every prior decision of the Commission in  
20     connection with deregulation. The Alliance shares Staff’s concern that the magnitude of the relief  
21     APS seeks calls into question several crucial elements of the regulatory structure for  
22     implementing competition, including, among other issues, stranded cost recovery, divestiture and  
23     transmission capacity. These are issues that may well have to be considered to adequately  
24     evaluate the Variance Request. This does not mean, however, nor does the Alliance believe that

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25     <sup>2</sup> The APS Settlement explicitly provides that “[a]fter the extensions granted in this [Agreement] have  
26     expired, APS shall procure generation for Standard Offer customers from the competitive market as  
   provided for in the Electric Competition Rules.” Addendum to Settlement Agreement at 4.1(3).

1 a midstream review and/or wholesale revision of every aspect of the Electric Rules is warranted.

2 For one thing, in express reliance on the current Electric Rules and prior Commission  
3 decisions, members of the Alliance have already invested billions of dollars in Arizona.  
4 Moreover, unlike the “horror” stories cited by APS from other states, the Commission’s structure  
5 for electric competition has worked. Arizona’s electric consumers have already realized  
6 significant benefits from deregulation through rate freezes and rate reductions. Accordingly, a  
7 Procedural Conference is necessary to frame and limit the scope of the issues that need to be  
8 addressed in this docket.

9 Next, as Staff correctly recognized, APS’ request is based on little more than a string of  
10 unsupported and conclusory allegations concerning, among other things, the availability and  
11 reliability of competitive generation, pricing stability, and the practicality of compliance with  
12 A.A.C. R14-2-1606(B). Staff Response at 5-6. Unless the Commission determines that the  
13 Variance Request should be summarily denied or dismissed, APS bears the burden and therefore,  
14 must produce evidence to support the bare allegations offered in connection with the Variance  
15 Request. In the event APS can produce such evidence, the other parties must be given time to  
16 conduct discovery and an opportunity to submit evidence to demonstrate that the Variance  
17 Request should not be granted. Therefore, a procedural schedule is one of the topics to address at  
18 the Procedural Conference.

19 Finally, the Alliance is particularly concerned over APS’ apparent belief that it can  
20 unilaterally decide to cease compliance with the Electric Rules, and prior Commission orders,  
21 including the order approving the APS Settlement Agreement, pending a decision on the Variance  
22 Request. The Commission has already determined that requiring APS to procure 100% of its  
23 generation for Standard Offer service from the competitive market, including 50% through a  
24 competitive bidding process, is in the public interest. *See, e.g.*, Decision No. 61969 (Sept. 29,  
25 1999). Until the Commission reverses that decision, amends the Electric Rules and approves a  
26 modified settlement, APS must remain in compliance with prior Commission orders and the

1 Electric Rules, including, without limitation, A.A.C. R14-2-1606.B, which will likely require  
2 APS to begin the process of procuring power from the market while this docket is pending.<sup>3</sup>  
3 Ensuring such compliance is another topic that needs to be addressed in a Procedural Conference.

4 **II. Relief Requested.**

5 As demonstrated herein, there are a number of critical procedural issues that must be  
6 addressed before the scope, nature and timing of the proceedings in this docket can be  
7 established. Consequently, for the reasons set forth herein, the Alliance hereby requests that the  
8 Hearing Division promptly schedule a Procedural Conference so these issues can be discussed  
9 and a Procedural Order governing this docket can be issued following the Procedural Conference.

10 DATED this 29<sup>th</sup> day of November, 2001.

11 ARIZONA COMPETITIVE POWER  
12 ALLIANCE

13  
14 By 

15 Greg Patterson

16  
17 Original and 10 copies  
18 hand-delivered this 29<sup>th</sup>  
day of November, 2001 to:

19 Docket Control  
20 Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

21 Copy of the foregoing  
22 hand-delivered this 30<sup>th</sup>  
23 day of November, 2001 to:

24 <sup>3</sup> While the Alliance shares Staff's concern over APS' divestiture of generation assets if APS is no longer  
25 going to obtain power from the competitive market (Staff Response at 2-3), APS has represented that  
26 divestiture will not occur until the Commission renders a decision on the Variance Request. APS Reply at  
5. Therefore, compliance by APS with this requirement should be stayed pending a decision in this  
docket.

1 Lyn Farmer  
2 Chief Administrative Law Judge  
3 Hearing Division  
4 Arizona Corporation Commission  
5 1200 W. Washington St.  
6 Phoenix, AZ 85007

7 Chris Kempley, Chief Counsel  
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12 And a copy mailed this 25<sup>th</sup> day  
13 of November, 2001, to:

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